

A2 27. The exercise device of claim 26, wherein [the] each said third link is movably connected to [the] a respective first link, and rotation of [the] each said crank causes [the] each said first link to move in reciprocating fashion relative to the frame.

Remarks

In the subject Action, the Examiner first stated that the Reissue Declaration is defective, and rejected all pending claims on the basis of this alleged defect. Applicant respectfully traverses this rejection and requests reconsideration for the following reasons. On page 2 of the Reissue Declaration, in the final paragraph under the heading 37 C.F.R. § 1.175 Requirements, each of the inventors declares that

All errors being corrected in this application (up to the time I read and executed this Declaration) arose without any deceptive intention on my part.

The undersigned attorney for Applicant recognizes that the parenthetical language does not literally track the language of 37 C.F.R. § 1.175(a)(2), and he has no immediate explanation for the discrepancy, but he wishes to emphasize, unequivocally, that it was not and is not the result of deceptive intent on the part of anyone involved in this application. Also, it is respectfully submitted that the actual declaration language is equivalent to the language of the federal regulation, since nothing in the application changed between the execution date of the declaration and the filing date of the declaration. In other words, the only

errors being corrected at this time are the same errors that are referenced in the Reissue Declaration. The Reissue Declaration states that all such errors arose without deceptive intent on the part of the inventors. Moreover, considering the language of 37 C.F.R. § 1.175(b), which requires a supplemental declaration to correct any error not addressed in the original reissue declaration, it is reasonable to conclude that the intent of the federal regulations is to distinguish between "pre-declaration errors" and "post-declaration errors" in order to preclude the possibility of correcting an error in the absence of a declaration that it arose without deceptive intent. In this case, Applicant respectfully submits that the originally filed Reissue Declaration is satisfactory with respect to the errors specified therein, and need not be replaced or supplemented unless or until an additional error was or is subsequently raised.

Next, the Examiner noted that the reissue application did not include an offer to surrender the original patent. Applicant acknowledges this requirement and will comply accordingly upon an indication of allowable subject matter.

Next, the Examiner denied the request for an interference, noting that Applicant's filing date precedes the filing date of the Rodgers patent.

Next, the Examiner rejected claims 19 and 26-27 for failing to include essential elements. Reconsideration is requested in view of the foregoing amendments to these claims.

Next, the Examiner rejected claims 10-15 for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Reconsideration is requested in view of the foregoing amendments to claims 10 and 13, from which the other claims depend.

Next, the Examiner rejected claims 26-27 for containing subject matter not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention; and then, the Examiner subsequently stated that claims 10-23 recite an elliptical path of motion which is not described in the disclosure, and claims 26-27 recite foot supports movable through multiple paths of motion without an adequate explanation in the disclosure as to how this type of motion is achieved. Applicant respectfully traverses these rejections/objections and requests reconsideration for the reasons set forth below.

All of the claims 10-23 recite that foot supporting members and/or a person's feet are movable through a generally elliptical path. In the Summary of the Invention section, the subject patent states that these linkages, each of which may comprise a single or a pair of linkage arms, are pivotally coupled to one another such that each foot pedal is free to move within a two-dimensional envelope of motion in a vertical plane (column 1, lines 62-66). As stated in the subject patent with reference to Figures 1-2, articulated assemblies 24 allow their respective associated foot pedals 26 to move within a two-dimensional envelope of motion in a vertical plane (column 3, lines 3-6).

With respect to the embodiment shown in Figure 3, the subject patent states that apparatus 110 is fundamentally similar to apparatus 10. Components of the modified device that are functionally equivalent to components of the apparatus 10 have corresponding reference numerals appended with a prime (Col. 5, lines 14-17). In other words, the foot pedals 26 and 26' are not constrained to follow the curves shown in dashed lines in Figures 1-2, but rather, are free to move anywhere along and/or inside these depicted curves. Applicant respectfully submits that because a generally elliptical path may be drawn inside the depicted curves, it is fair to conclude (and claim) that the foot supports are movable through a generally elliptical path.

Claim 26, from which claim 27 depends, recites a foot support movable through multiple paths of motion. As noted above, the foot supports 26 and 26' are free to move through different paths along and/or inside the curves depicted in dashed lines in Figures 1-2. With respect to Figure 3, in particular, the subject patent states that the crank assembly 120 may be locked to limit movement of the pedals 26' to a stair-climbing mode, thereby implying that the pedals are movable in other ways when the crank assembly 120 is unlocked.

Finally, the Examiner noted that claims 1-30 avoid the art of record. In view of this finding, as well as the foregoing responses to the Examiner's rejections and objections, Applicant respectfully requests reconsideration and allowance of this reissue application. In the event that any issue remains

unresolved, the undersigned attorney for Applicant would certainly welcome an opportunity to discuss the issue with the Examiner at the Examiner's convenience.

Respectfully submitted,

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